

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DERRICK JONES,

Plaintiff-Appellant,

v.

THOMAS CAMPBELL,

Defendant-Appellee.

USDC Case No. 15-C-1048

USCA Case No. 16-2178

ORDER GRANTING MOTION TO WAIVE INITIAL PARTIAL FILING FEE

On May 17, 2016, the plaintiff, Derrick Jones, filed a notice of appeal from this Court's April 25, 2016 Order granting the defendant's motion to dismiss because Jones failed to file within the applicable statute of limitations. Based on Jones' prisoner trust account statement for the six-month period immediately preceding the filing of his complaint as required under 28 U.S.C. § 1915(a)(2), on May 27, 2016, this Court ordered Jones to pay a \$0.90 initial partial filing fee in the appeal. Apparently on July 16, 2016, Jones attempted to file a motion with the district court seeking waiver of his initial partial filing fee, stating that he does not receive funds from family or friends and does not hold an institutional job. The Clerk returned the motion to him without docketing it on the mistaken assumption that it was a duplicate motion. Upon not receiving the initial partial filing fee the Court of Appeals issued an order directing the plaintiff to show cause why his appeal should not be dismissed. On July 25, 2016, plaintiff forwarded his response to the Court of Appeals Order to Show Cause to this Court. At that point, this Court became aware of Jones' earlier motion to waive the initial partial filing fee and will now address his request.

The Prison Litigation Reform Act (PLRA) requires a prisoner pay the applicable filing fees in full for an appeal. 28 U.S.C. § 1915(b)(1). The total cost of filing an appeal is \$505.00. Under

the PLRA, the court must assess an initial partial filing fee of twenty percent of the average monthly deposits to Jones' account or average monthly balance in Jones' prison account for the six-month period immediately preceding the filing of the complaint, whichever is greater. *Id.* After the initial fee is paid, the prisoner must make monthly payments of twenty percent of the preceding month's income until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). "The agency having custody of the prisoner shall forward payments from the prisoner's account to the Clerk of the Court each time the amount in the account exceeds \$10 until the filing fees are paid." *Id.*

With this motion, Jones did not file a new certified copy of his prisoner trust account statement covering the period after May 18, 2016. Instead, he filed a statement for a one-week period from June 11, 2016 to June 17, 2016. This statement revealed Jones had a regular account balance of \$0.00 as he had on his previous statement. Because Jones is still obligated to pay the full filing fee pursuant to the statutory formula set forth in 28 U.S.C. § 1915(b)(2), he will not be required to pay the initial partial appeal fee.

IT IS THEREFORE ORDERED that Jones' initial partial appeal fee will be waived.

IT IS FURTHER ORDERED that the Secretary of the Wisconsin Department of Corrections or his designee shall collect from Jones' prison trust account the balance of the appeal fee (\$505.00) by collecting monthly payments from Jones' prison trust account in an amount equal to 20% of the preceding month's income credited to Jones' trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10.00 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that copies of this order be sent to the warden of the institution where Jones is confined and to PLRA Attorney, United States Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Rm. 2722, Chicago, Illinois 60604.

Dated at Green Bay, Wisconsin this 26th day of July, 2016.

BY THE COURT

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Judge